

**STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES**



**GENERAL PERMIT FOR MAINTENANCE DREDGING OF
PREVIOUSLY DREDGED AREAS**

PERMITTEE: The General Public in Wisconsin

PERMIT NO.: GP13-2015-WI (WDNR-GP13-2015)

ISSUING OFFICE: Waterways & Wetland Protection Section, Bureau of Watershed
Management, Water Division, Wisconsin Department of Natural Resources (DNR
or Department)

ISSUANCE DATE: XX/XX/2015

EXPIRATION DATE: XX/XX/2020

GENERAL PERMIT AUTHORIZATIONS:

In compliance with the provision(s) of Wis. Stats. section 30.20(1)(b), no person may remove any material from the bed of a natural navigable lake or navigable stream unless an individual or a general permit has been issued under s. 30.20 or authorization has been granted by the legislature.

Wis. Stats. s. 30.20(1t)(a) requires and authorizes the Department to issue a statewide general permit under s. 30.206 authorizing a person to conduct maintenance dredging and remove material from the bed of a navigable lake or navigable stream from which material was historically removed. Further, s. 30.20(1t)(am) requires a person to demonstrate that material has been previously removed from the area for which the person has requested authorization to remove materials from the bed.

Wis. Stats. s. 30.206(1)(a) requires and authorizes the Department to issue general permits that authorize any person in the State of Wisconsin to perform work in accordance with the terms and conditions of the general permit specified below after satisfying all applicable permit terms and conditions. Please refer to the following sections of this permit for the specific eligibility standards, application requirements, certification requirements and responsibilities, conditions, findings of fact, conclusions of law, and definitions required by WDNR-GP13-2015.

Note: Projects involving the removal and lease or sale of any material from the bed of any navigable lake or of any outlying waters are ineligible for this general permit and must obtain a contract from the department under Wis. Stats. section 30.20(2)(a) and (b).

OTHER AUTHORIZATIONS NECESSARY: WDNR-GP13-2015 authorizations are subject to all applicable terms and conditions specified in this permit. However, **WDNR-GPX-2014 authorizations are provisional and require that project proponents obtain any other local, state or federal permits before any work may proceed.** The U.S. Army Corps of Engineers may require permits for dredging projects that affect Section 10 Navigable Waters under the Rivers and Harbor Act of 1899 or projects that will result in a discharge under the Clean Water Act.

PROJECT DESCRIPTION AND LOCATION: WDNR-GP13-2015 applies to maintenance dredging of previously dredged areas. Previously dredged areas are areas where material was historically removed from the bed of navigable lakes and rivers. While the previous dredging may have been authorized by the department, applicants may also demonstrate, with historical information or documentation, that dredging occurred at the project site.

The removal of material from the beds of navigable waters is regulated under Wis. Stats. subs. 30.20 (1), (1g), (1m), (1t) and (2). Any person that intends to remove material from the bed of a navigable lake or stream must obtain a permit or contact from the Department.

GENERAL PERMIT COVERAGE: Unless notified by the Department to the contrary, the effective date of coverage under this general permit is 30 calendar days after a complete notification package has been received by the designated DNR office. A list of offices and addresses to send your complete notification package (based on the county where the project is located) can be found at http://dnr.wi.gov/waterways/about_us/county_contacts.html. **WDNR-GP13-2015 permit coverage is valid for a period of 5 years from the date the Department determines the activity is authorized by this general permit or until the authorized activity has been completed, whichever occurs first.** Thereafter, permit coverage terminates unless another complete notification package is submitted to retain coverage under this permit or a reissued version of this permit.

State of Wisconsin Department of Natural Resources
For the Secretary

Watershed Bureau Director

Date Permit Signed

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WDNR-GP13-2015 TERMS AND CONDITIONS

The following sections describe the general permit authorization procedures implemented by the DNR in WDNR-GP13-2015. Projects must meet all the terms and conditions of this permit to be eligible for coverage under WDNR-GP13-2015.

NOTE: The term "you" and its derivatives, as used in this general permit, means the person who submitted and signed the complete notification package for coverage under the General Permit or the person who removes material from the bed of a navigable lake or stream under coverage of this General Permit. The term "the Department" or "this office" refers to the appropriate Wisconsin Department of Natural Resources (DNR) Service Center, DNR Region or Central Office headquarters of the Wisconsin DNR having jurisdiction over the authorized activity or the appropriate official of that office acting under the authority of the Secretary of the Department.

SECTION 1 – WDNR-GP13-2015 ELIGIBILITY STANDARDS AUTHORIZATION

Any person who conducts maintenance dredging of material from navigable lake or stream, in an area that was previously dredged, is required to obtain a permit under Wis. Stats. s. 30.20(1t)(a), and must meet all of the following standards to be eligible for coverage and authorization under this general permit.

NOTE: Projects that do not meet all standards are not eligible for this general permit and are therefore excluded from coverage under WDNR-GP13-2015. For projects that do not qualify for WDNR-GP13-2015, you may apply for an Individual Permit as outlined in Wis. Stats. s. 30.208(2). Wis. Stats. Further, s. 30.206(3r), Wis. Stats. allows the Department to require an individual permit in lieu of a general permit if the Department determines that the proposed activity is not authorized under WDNR-GP13-2015 or conducts an investigation and visits the site and determines that conditions specific to the site require restrictions on the activity in order to prevent significant adverse impacts to the public rights and interest, environmental pollution, as defined in Wis. Stats. s. 299.01 (4), or material injury to the riparian rights of any riparian owner.

ELIGIBILITY STANDARDS FOR MAINTENANCE DREDGING OF PREVIOUSLY DREDGED AREAS

1. Projects involving the removal and then the lease or sale of any material from the bed of any navigable lake or of any outlying waters are ineligible for this general permit. The lease or sale of dredged material from a navigable lake or outlying water must obtain a dredging contract from the department under Wis. Stats. Section 30.20(2)(a) and (b).
2. The project purpose is maintenance dredging of material from an area from which material has previously been removed.
3. The applicant has provided information that the area meets the definition of "previously dredged area" in Section 7 of this permit by demonstrating that previous removal of material was authorized by the department or otherwise demonstrating the previous removal of material by providing historical documentation or information that estimates the approximate date or timeframe of the removal, the amount of material removed and the location of the material disposal. The applicant may submit any additional information documenting prior removal of material.
4. The dredging may not exceed the volume or extend beyond the dimensions of the previous dredge project.
5. The total amount of material removed from the area shall be less than 3000 cubic yards, unless the dredging project is for the removal of material associated with the maintenance of a municipal harbor, a municipal or commercial marina, or an access channel that is located on an Outlying Waters or the Mississippi River. The total amount of material removed from a municipal harbor, a municipal or commercial marina or an access channel shall be less than 50,000 cubic yards.
6. If the project location is within the riparian zone, the applicant is the riparian owner or has the permission of the riparian owner to dredge the bottom material.
7. Unless the department previously authorized the project under s. 30.20, Stats., the dredging may not be located where there are public rights features as described in section NR 1.06, Wisconsin Administrative Code or in an area of special natural resource interest as described in section NR 1.05, Wisconsin Administrative Code.

If the area in which the project is located is identified as an area of special natural resource interest for the exclusive reasons that the water or portions of the water contain endangered or threatened species or aquatic elements as defined and identified in the Wisconsin Natural Heritage Inventory or that the water flows through a wetland area identified in a Special Area Management Plan (SAMP) or a Special Wetland Inventory Study (SWIS), then the project is eligible for this general permit even if the previous dredging was not authorized by the Department, if the applicant obtains one of the following:

- a) An incidental take permit under s. 29.604, Wisconsin Statutes
- b) Written documentation from the department that the project will not impact the habitat or continued existence of the endangered or threatened species or

that the dredging project will not adversely impact the wetlands identified in the SAMP or SWIS.

8. The applicant shall provide information that the dredged material does not contain any hazardous substance as follows:
- a) Through the collection and laboratory analysis of the dredged material in compliance with ch. NR 347, Wis. Adm. Code; or
 - b) Through the review of historical dredge material information from the vicinity of the proposed project that was collected and analyzed in accordance with ch. NR 347, Wis. Adm. Code; or
 - c) By assessing the potential for hazardous substances to be present based upon the characteristic of the watershed, industrial and municipal discharges to the waterbody and dredge material data from similar waterways.

9. Fish Spawning. To minimize adverse impacts on fish movement, fish spawning, and egg incubation periods, placement or removal of the structure may not occur during the following time periods.

- a) September 15th through May 15th for all trout streams; and upstream to the first dam or barrier on the Root River (Racine County), the Kewaunee River (Kewaunee County), and Strawberry Creek (Door County). To determine if a waterway is a trout stream, you may use the WDNR website trout maps which can be found at <http://dnr.wi.gov/topic/fishing/trout/streammaps.html>
- b) March 1st through June 15th for ALL OTHER waters.
- c) The regional Department Fisheries Biologist may waive or modify these timing restrictions in writing. To request in writing a waiver or modification of fish spawning timing restrictions for your project please use the checklist listed as Appendix 1 and use the WDNR website at: <http://dnr.wi.gov/topic/Waterways/contacts.html> to find the county contact for your project to send the requested information.

10. The project shall be conducted in a manner that prevents the dispersal of sediment away from the project site. Temporary control measures such as silt curtains shall be used as needed, and shall be installed prior to dredging and removed from the waterbody no more than 24 hours after dredging is complete. Any temporary control measures shall follow all state lighting requirements and may not obstruct navigation.

11. Erosion control measures must meet or exceed the technical standards for erosion control approved by the department under Wis. Admin. Code subch. V of ch. NR 151. Any area where topsoil is exposed during construction must be immediately seeded and mulched or riprapped to stabilize disturbed areas and prevent soils from being eroded and washed into the waterway. **Note:** These standards can be found at the following website: <http://dnr.wi.gov/topic/stormwater/standards/>.

12. Dredging shall be conducted to minimize the re-suspension of sediment to the maximum extent practicable in accordance with the following:

- a) For trout streams identified under s. NR 1.02(7) and perennial tributaries to those trout streams, the total suspended solid concentrations may not exceed 40 mg/L immediately downstream of the project site.

- b) For all waters not identified in subd. 6. a., the total suspended solid concentrations may not exceed 80 mg/L immediately downstream of the project site.
13. Any dredged material removed from the waterbody may not be permanently or temporarily placed in a wetland, or floodway or re-deposited below the ordinary high water mark of a navigable waterway.
14. Dredged material may not be placed within a wetland or below the ordinary high water mark of a navigable waterway unless a plan is submitted and approved by the Department. The plan shall identify the duration of placement and erosion control measures utilized to protect the wetland or navigable waterway.

SECTION 2 – WDNR-GP13-2015 APPLICATION REQUIREMENTS FOR COVERAGE

You are required to comply with the following application requirements:

1. To comply with the requirements in NR 347, Wisconsin Administrative Code and prior to submission of an application, applicants shall provide the department with preliminary dredging information including:
 - a) Name of waterbody and location of project;
 - b) Volume of material to be dredged;
 - c) Brief description of dredging method and equipment, including any containment BMPs to be used.
 - d) Brief description of proposed disposal method and location and, if a disposal facility is to be used, size of the disposal facility;
 - e) Any previous sediment sampling (including field observations) and analysis data from the area to be dredged or from the proposed disposal site;
 - f) Copy of a map showing the area to be dredged, the depth of cut, the specific location of the proposed sediment sampling sites and the bathymetry of the area to be dredged; and
 - g) Anticipated starting and completion dates of the proposed project.

Utilizing the factors established in NR 347.05(2), the Department shall then make a determination within 30 business days if there is reason to believe that the material proposed to be dredged is contaminated. This initial evaluation by the Department shall be used in specifying sediment sampling and analysis required under s. NR 347.06, Wis. Adm. Code. The department shall also identify the appropriate staff person to contact to obtain documentation that the applicant can meet the eligibility standard 6. for waters or portions of waters that listed as areas of special natural resource interest for the exclusive reason that endangered and threatened species may be present.

2. After you have carefully confirmed that your project(s) meet(s) the purpose and all the terms and conditions of this permit, submit a *complete application package*, outlined in item 5 below, to the Department. The complete application package should be received a minimum of 30 calendar days before the desired project start date. DNR offices for paper application submittal can be found at http://dnr.wi.gov/topic/Waterways/about_us/county_contacts.html

NOTE: The Department will forward a copy of your application package to the U.S. Army Corps of Engineers for their review and determination regarding federal permit requirements and coverage.

3. Unless notified by the Department to the contrary, the effective date of coverage under this permit is 30 calendar days after the designated DNR office receives a complete application package.
4. The Department may request that you provide additional information necessary to verify compliance with the terms and conditions of this permit. The Department may make a request for additional information one time during the 30-day period. If the department makes a request for additional information, the 30-day period is paused on the date the person applying for authorization receives the request for additional information. The clock remains paused until the date on which the department receives the information, at which point the clock resumes from the point it was initially stopped.
5. The Department may determine the project is not eligible for this general permit and require that the project be reviewed through the individual permit process outlined in Wis. Stats ch. 30.
6. Submit the application electronically using the Internet-based application process or if Internet access is unavailable submit three (3) copies of the application on forms supplied by the Department. A complete application package must include all of the following information:
 - a) A Complete Application form certifying that the project meets the terms and conditions of WDNR-GP13-2015. This form can be found at <http://dnr.wi.gov/Permits/Water/>.
 - b) The appropriate application fee.
 - c) A copy of the deed or similar proof of ownership of the site where the activity will occur. If you do not own the site, also include proof of any notice(s) and permission(s) required by Section IA, standards 7 or 8 of this General Permit.
 - d) A project diagram that shows all of the following:
 - i. Project location relative to the Ordinary High Water Mark (OHWM).
 - ii. The location of erosion control measures to be utilized during the dredging operation and disposal of the material.
 - e) A copy of the results from any sediment sampling, required under NR 347, Wisconsin Administrative Code.
 - f) Maps of the project site that show and identify the location of all the following:
 - i. The riparian lines on both sides of the property extending from the OHWM to the line of navigation, and the riparian zone area from the OHWM to the line of navigation.
 - ii. The proposed disposal location.
 - g) Photographs that represent existing project site conditions at the disposal site and the site where the dredging will take place.

SECTION 3 – WDNR-GP13-2015 CERTIFICATION AND RESPONSIBILITIES

The applicant certifies and agrees to the following:

1. You agree to be the responsible party that supervises and oversees all aspects of the project to ensure compliance with the terms and conditions of WDNR-GP13-2015.
2. Upon submittal of a complete application package to DNR, you have certified that the project will be conducted in compliance with all the terms and conditions of WDNR-GP13-2015.
3. You certify that pursuant to Wis. Stats. ss. 30.206(1)(ag) and (3r)(a)2., the maintenance dredging of material from the bed of a navigable water from which material has previously been removed will not materially interfere with navigation, cause environmental pollution as defined in Wis. Stats. s. 299.01(4), or result in significant cumulative adverse environmental impacts, injury or significant adverse impacts to the public rights and interests in the waterway, material injury to the rights or riparian rights of any riparian owner, or adverse impacts to the riparian property rights of adjacent riparian owners.

SECTION 4 – WDNR-GP13-2015 GENERAL PERMIT CONDITIONS

The applicant agrees to comply with the following conditions:

1. **Application.** You must submit a complete application package to the Department as outlined in Section 2 of this general permit. If requested, you must furnish to the Department within a reasonable timeframe any information the Department needs to verify compliance with the terms and conditions of this permit.
2. **Certification.** Acceptance of general permit WDNR-GP13-2015 and efforts to begin work on the activities authorized by this general permit signifies that you have certified the project meets all eligibility standards outlined in Section 1 of this permit and that you have read, understood and agreed to follow all terms and conditions of this general permit.
3. **Project Plans.** This permit does not authorize any work other than the work that is specifically described in the notification package and plans submitted to the Department and that you certified is in compliance with the terms and conditions of WDNR-GP13-2015
4. **Expiration.** This WDNR-GP13-2015 is valid for a period of 5 years from the date of issuance. Any activity that the Department determines is authorized by WDNR-GP13-2015 remains authorized under WDNR-GP13-2015 for a period of 5 years from the date of the Department's determination or until the activity is completed, whichever occurs first, regardless of whether WDNR-GP13-2015 expired before the activity is completed.
5. **Other Permit Requirements.** You are responsible for obtaining any other state permits for the dewatering or disposal of the dredged material and any other permits

or approvals that may be required for your project by local zoning ordinances and the U.S. Army Corps of Engineers (USACE) before starting your project. To locate the USACE staff responsible for review projects in Wisconsin please visit <http://www.mvp.usace.army.mil/Missions/Regulatory.aspx>

6. **Project Start.** You must notify the Department using the information provided on the confirmation of coverage letter you receive before starting any activity and again not more than 5 days after the activity is completed.

7. **Permit Posting.** You must post a copy of this permit at a conspicuous location on the project site for at least 5 days prior to the project starting, and the copy must remain posted on the project site at least five days after the project is complete. You must also have a copy of the permit and approved plan available at the project site at all times until the project is complete.

8. **Permit Compliance.** The Department may modify or revoke coverage of this permit if dredging is not carried out in compliance with the terms and conditions of this permit or if the Department determines the project will be detrimental to the public interest. Any act of noncompliance with this permit constitutes a permit violation and is grounds for enforcement action. Additionally, if any conditions of this permit are found to be invalid or unenforceable, authorization for all activities to which that condition applies is denied.

9. **Project Completion.** *Within one week* of project completion you must submit to the Department a statement certifying that the project is in compliance with all the terms and conditions of this permit and photographs of the work authorized by this permit.

10. **Site Access.** Upon reasonable notice, you must allow access to the site to any Department employee who is investigating the project's construction, operation, maintenance or compliance with the terms and conditions of WDNR-GP13-2015 and applicable laws.

11. **Erosion and Sediment Control Practices.** The project site must implement erosion and sediment control measures that adequately control or prevent erosion, and prevent damage to waterways and wetlands as outlined in Wis. Admin. Code s. NR 151.11(6m). These standards can be found at the following website: http://dnr.wi.gov/topic/Stormwater/standards/const_standards.html. Any area where topsoil is exposed during the project should be immediately seeded and mulched to stabilize disturbed areas and prevent soils from being eroded and washed into the waterway. Unless part of a permanent stormwater management system, all temporary erosion and sediment control practices shall be removed upon final stabilization. Areas disturbed during removal shall be restored.

12. **Invasive Species.** To stop the spread of invasive species and viruses from one navigable waterway to another navigable waterway, all equipment or portions of equipment used for constructing, operating, or maintaining the project, including tracked vehicles, barges, boats, silt or turbidity curtains, hoses, sheet piles, and pumps, must be decontaminated for invasive species and viruses before and after use **or** prior to use within another navigable waterway. Follow the most recent Department approved washing and disinfection protocols and Department approved

best management practices to avoid the spread of invasive species as outlined in Wis. Adm. Code ch. NR 40. These protocols and practices can be found on the Department website at <http://dnr.wi.gov/topic/Invasives/bmp.html> Keyword: "equipment operator" or "invasive bmp" and at <http://dnr.wi.gov/topic/Invasives/documents/EquipOper.pdf>

13. Federal and State Threatened and Endangered Species. WDNR-GP13-2015 does not affect the DNR's responsibility to ensure that all authorizations comply with Section 7 of the Federal Endangered Species Act, Wis. Stats. s. 29.604, and applicable State Laws. The project must either avoid impacts to endangered or threatened species in accordance with Wis. Stats. s. 29.604, or receive an incidental take authorization under Wis. Stats. s. 29.604. No Department authorization under this permit will be granted for projects found not to comply with these laws. No activity is authorized that is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation as identified under the Federal Endangered Species Act or State law or both, or that is likely to destroy or adversely modify the critical habitat of a species as identified under the Federal Endangered Species Act.

14. Historic Properties and Cultural Resources. WDNR-GP13-2015 does not affect the DNR's responsibility to ensure that all authorizations comply with Section 106 of the National Historic Preservation Act and Wis. Stats. s. 44.40. No Department authorization under this permit will be granted for projects found not to comply with these laws. The project must avoid impacts to archaeological sites or historic structures and is subject to Departmental and Wisconsin Historical Society review and approval before authorization under this general permit is valid. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places. If cultural, archaeological, or historical resources are unearthed *during* activities authorized under this permit, work must be stopped immediately and the State Historic Preservation Officer must be contacted for further instruction.

15. Preventive Measures. Measures must be adopted to prevent potential pollutants from entering a wetland or water body. Construction materials and debris, including fuels, oil, and other liquid substances, may not be stored in the construction work area in a manner that would allow them to enter a wetland or water body as a result of spillage, natural runoff, or flooding. In addition, biodegradable hydraulic fluid should be used in equipment that is operated below the Ordinary High Water Mark. If a spill of any potential pollutant should occur, it is the responsibility of the permittee to remove such material, minimize any contamination resulting from this spill, and immediately notify the State Duty Officer at **1-800-943-0003**.

16. Property Rights. This permit does not convey any property rights or interests of any sort or any exclusive privilege. The permit does not authorize any injury or damage to private property, any invasion of personal rights, or any infringement of federal, state or local laws or regulations.

17. Limits of State Liability. In authorizing work, the State Government does not assume any liability, including for any of the following:

- a) Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

- b) Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the State in the public interest.
- c) Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d) Design or construction deficiencies associated with the permitted work.
- e) Damage claims associated with any future modification, suspension, or revocation of this WDNR-GP13-2015.

18. Reevaluation of Decision. This office may reevaluate its decision on any authorization under WDNR-GP13-2015 at any time the circumstances warrant and may suspend, modify or revoke any previously authorized activity. Suspension, modification or revocation may result in enforcement action. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a) The applicant fails to comply with the terms and conditions of WDNR-GP13-2015.
- b) The information provided by the applicant in support of the permit application proves to have been false, incomplete, inaccurate, or false
- c) Significant new information surfaces which the Department did not consider in reaching the original public interest decision.

SECTION 5 – WDNR-GP13-2015 FINDINGS OF FACT

1. The Department has determined that the project site and project plans meet the standards in WDNR-GP13-2015 to qualify for this General Permit.
2. The maintenance dredging of previously dredged areas will not materially interfere with navigation, cause environmental pollution as defined in Wis. Stats. s. 299.01(4), or result in significant cumulative adverse environmental impacts, injury or significant adverse impacts to the public rights and interests in the waterway, material injury to the rights or riparian rights of any riparian owner, or adverse impacts to the riparian property rights of adjacent riparian owners, pursuant to Wis. Stats. s. 30.206(1)(ag) and (3r)(a)2.
3. The Department and the applicant have completed all procedural requirements, and the project as permitted will comply with all applicable requirements of WDNR-GP13-2015 and Wis. Admin. Code chs. NR 102, 103, 150, 299, and 310.

SECTION 6 – WDNR-GP13-2015 CONCLUSIONS OF LAW

1. The Department has authority under Wis. Stats. ch. 30 to issue a permit for the completion of this project.
2. The Department has complied with Wis. Stats. s. 1.11.

SECTION 7 – WDNR-GP13-2015 DEFINITION OF TERMS

You accept the following definitions for use with this general permit:

1. "Access channel" means an area that provides access to a municipal harbor, municipal or commercial marina or other area that provides access to Outlying Waters as defined in Section 7 of this General Permit.
2. "Area of special natural resource interest" has the meaning in Wis. Stats. s. 30.01 (1am) and as identified by the department in Wis. Admin. Code s. NR 1.05.
Note: "Area of special natural resource interest" means any of the following:
 - a) A state natural area designated or dedicated under Wis. Stats. ss. 23.27 to 23.29.
 - b) A surface water identified as a trout stream by the department in Wis. Admin. Code s. NR 1.02(7).
 - c) A surface water identified as an outstanding or exceptional resource water under Wis. Stats. s. 281.15.
 - d) An area that possesses significant scientific value, as identified by the department in Wis. Admin. Code s. NR 1.05. Areas possessing significant scientific value are identified in Wis. Admin. Code s. NR 1.05 as:
 - i. Waters or portions of waters that contain endangered or threatened species or aquatic elements as defined and identified in the Wisconsin Natural Heritage Inventory.
 - ii. Wild rice waters as identified in a written agreement between the department and the Great Lakes Indian Fish and Wildlife Commission.
 - iii. Waters in areas identified in a special area management plan (SAMP), approved by the U.S. Army Corps of Engineers, or special wetland inventory study (SWIS) identified under s. NR 103.04.
3. "Commercial marina" means a facility containing piers, wharves and other mooring spaces, where the riparian property is not owned by a municipality, but is open to the general public, and the primary purpose of the facility is to provide boats or boat slips either for rental or for free.
4. "Department" means the Department of Natural Resources.
5. "Dredged material" means any material removed below the Ordinary High Water Mark (OHWM) or from the bed of a navigable waterway by dredging. The bed of a navigable waterway extends landward to the OHWM.
6. "Dredging" means any part of the process of the removal or disturbance of material from below the OHWM or from the bed of a navigable waterway, transport of the material to a disposal, rehandling or treatment facility; treatment of the material; discharge of carriage or interstitial water; and disposal of the material. For the purpose of Ch. 30, Stats., dredging does not include "de minimus" activities.
7. "Final stabilization" means that all land disturbing construction activities at the site have been completed and that a uniform perennial vegetative cover has been established with a density of at least 70% of the cover for the unpaved areas and areas not covered by permanent structures or that employ equivalent permanent stabilization measures.
8. "Line of navigation" means the depth contour where the water is 3 feet deep at its maximum depth based on the normal summertime low levels on the waterway or

summer minimum levels where established by department order. **Note:** Where a municipality has adopted an ordinance establishing a municipal pierhead line authorized under s. 30.13, Stats., the line of navigation is the municipal pierhead line.

9. "Municipal harbor" means a port, inlet or area on a body of water normally sheltered from heavy seas and in which a vessel can navigate and safely moor.

10. "Municipal marina" means a facility containing piers, wharves and other mooring spaces where the riparian property is owned by a municipality and the primary purpose of the facility is to provide boats or boat slips for rental or for free.

11. "Navigable waterway" means any body of water with a defined bed and banks that is navigable under Wisconsin law. In Wisconsin, a body of water is navigable if it is capable of floating on a regularly recurring basis the lightest boat or skiff used for recreation or any other purpose. This incorporates the definition at Wis. Stats. s. 30.01(4m), and current case law, which requires a watercourse to have a bed and banks, *Hoyt v. City of Hudson*, 27 Wis. 656 (1871), and requires a navigable waterway to float on a regularly recurring basis the lightest boat or skiff, *DeGayner & Co., Inc. v. DNR*, 70 Wis. 2d 936 (1975); *Village of Menomonee Falls v. DNR*, 140 Wis. 2d 579 (Ct. App. 1987).

12. "Ordinary high water mark" (OHWM) means the point on the banks or shore up to which the presence and action of water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation or other easily recognizable characteristic.

13. "Outlying Waters" has the meaning given in s. 29.001(63) and means Lake Superior, Lake Michigan, Green Bay, Sturgeon Bay, Sawyer's Harbor and the Fox River from its mouth up to the dam at De Pere.

14. "Previously dredged area" means an area below the ordinary high water mark of a navigable waterway from which material was historically removed.

15. "Public Rights Feature" has the meaning in Wis. Admin. Code s. NR 1.06.

Note: "Public Rights Features" means any of the following:

- a) Fish and wildlife habitat, including specific sites necessary for breeding, nesting, nursery and feeding. **Note:** Physical features constituting fish and wildlife habitat include stands of aquatic plants; riffles and pools in streams; undercut banks with overhanging vegetation or that are vegetated above; areas of lake or streambed where fish nests are visible; large woody cover.
- b) Physical features of lakes and streams that ensure protection of water quality. **Note:** Physical features that protect water quality include stands of aquatic plants (that protect against erosion and so minimize sedimentation), natural streambed features such as riffles or boulders (that cause turbulent stream flow and so provide aeration).
- c) Reaches of bank, shore or bed that are predominantly natural in appearance (not man-made or artificial) or that screen man-made or artificial features. **Note:** Reaches include those with stands of vegetation that include intermixed trees, shrubs and grasses; stands of mature pines or other conifer

species; bog fringe; bluffs rising from the water's edge; beds of emergent plants such as wild rice, wild celery, reeds, arrowhead.

- d) Navigation thoroughfares or areas traditionally used for navigation during recreational boating, angling, hunting or enjoyment of natural scenic beauty.

Note: Physical features indicative of navigation thoroughfares include shallow water areas typically used by wading anglers or areas frequently occupied by regularly repeated public uses such as water shows.

16. "Riparian" means an owner of land adjacent to a navigable waterway.

17. "Stabilize" means the process of making a site steadfast or firm, minimizing soil movement by the use of practices such as mulching and seeding, sodding, landscaping, paving, graveling or other appropriate measures.